

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

GARY BLUNT,

Plaintiff,

v.

CHRISTOPHER TOMLINSON,

Defendant.

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CIVIL ACTION NO. 04-0124-CG-M

ORDER

This matter is before the court on defendant's answer (Doc. 26) and special report (Doc. 29) which this court converted to a motion for summary judgment (Doc 53), and plaintiff's opposition thereto (Doc. 54). Upon a thorough review of the above pleadings, the court finds that there is a material question of fact which precludes summary judgment in this case. Defendant's answer and special report recounts his version of the events at issue. In opposition, plaintiff submitted an affidavit which details a completely different account of the incident in question. In evaluating the argument of the moving party, the court must view all evidence in the light most favorable to the non-moving party, and resolve all reasonable doubts about the facts in its favor. Burton v. City of Belle Glade, 178 F.3d 1175, 1187 (11th Cir.1999). Looking at the case in the light most favorable to plaintiff, as the non-movant, the court finds that plaintiff's affidavit raises issues as to material facts in this case. Therefore, the motion for summary judgment is **DENIED** and the case is referred to the Magistrate Judge for entry of a scheduling order.

DONE and ORDERED this 16th day of May, 2008.

/s/ Callie V. S. Granade

CHIEF UNITED STATES DISTRICT JUDGE